



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 12, 2017

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
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SUBJECT: MUR 7114 (Casperson for Congress, *et al.*)
Revised Factual and Legal Analysis

The Complaint in this matter alleged that Tom Casperson's state committee paid for expenses related to Casperson's federal campaign, and that the state committee raised and spent non-federal funds. On June 22, 2017, the Commission voted to dismiss the allegations in this matter, pursuant to *Heckler v. Chaney*, and directed the Office of General Counsel to prepare an appropriate Factual and Legal Analysis. See Certification, MUR 7114 (Casperson for Congress, *et al.*) (June 26, 2017).

Consistent with the Commission's direction at the June 22, 2017 Executive Session, we have revised the Factual and Legal Analysis to reflect the discussion at the table and to reflect that the Commission exercised its prosecutorial discretion to dismiss the matter. We recommend that the Commission vote to approve the attached Factual and Legal Analysis and close the file.

RECOMMENDATIONS:

1. Approve the attached Factual and Legal Analysis;
2. Close the file.

Attachments:

1. Factual and Legal Analysis – Clean

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1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 **RESPONDENTS:** Casperson for Congress and Judi Skradski in MUR 7114
5 her official capacity as treasurer
6 Tom Casperson
7 Tom Casperson for State Senate
8

9 **I. INTRODUCTION**

10 The Complaint alleges that Tom Casperson for State Senate ("State Committee")
11 transferred funds to Casperson for Congress ("Federal Committee") to pay for travel related to
12 Casperson's congressional campaign, in violation of the Federal Election Campaign Act of 1971,
13 as amended ("the Act").¹ The Complaint also alleges that after Casperson became a federal
14 candidate, the State Committee raised and spent non-federal funds, in violation of the Act. For
15 the reasons set forth below, the Commission exercises its prosecutorial discretion and dismisses
16 the allegations.

17 **II. FACTUAL BACKGROUND**

18 Casperson was elected as a state senator for Michigan's 38th State Senate District in 2010
19 and won re-election to another four-year term in 2014.² Michigan limits its state senators to two
20 terms in office.³ Casperson announced his candidacy for Michigan's First Congressional District
21 on November 9, 2015, and registered the Federal Committee on November 20, 2015.⁴

¹ Casperson and the Federal Committee filed a joint response. *See* Response to Complaint from Tom Casperson and Casperson for Congress (Sept. 16, 2016) ("Fed. Comm. Resp."). The State Committee filed a separate response. *See* Response to Complaint from Tom Casperson for State Senate (Jan. 30, 2017) ("State Comm. Resp.").

² Casperson has served as a state senator since 2010. *See* State Senator Tom Casperson, *Meet Tom*, <http://www.senatortomcasperson.com/meet-senator-tomcasperson/> (last visited Mar. 30, 2017).

³ Mich. Const. Art. IV, Sec. 54.

⁴ Compl. at 2 (July 28, 2016); Fed. Comm. Resp. at 1; *see* FEC Form 2, Tom Casperson (Nov. 20, 2015); FEC Form 1, Statement of Organization, Casperson for Congress (Mar. 16, 2011).

1 Casperson continued to serve as a state senator and maintained the State Committee while he
2 was a federal candidate.⁵ He lost the primary for the congressional seat on August 2, 2016.⁶

3 The Complaint alleges that after Casperson declared his federal candidacy, he used non-
4 federal funds from the State Committee to “finance his federal campaign’s announcement tour.”⁷
5 The Complaint argues that Casperson “raised over \$10,000 from state PACs” while he was a
6 federal candidate, including contributions that do not comply with the source and amount
7 prohibitions of the Act, and he used those funds for his federal campaign travel.⁸ According to
8 the Michigan Secretary of State’s records, the State Committee raised \$16,500 between the date
9 Casperson declared his federal candidacy and his congressional primary.⁹

10 Respondents deny the allegations. While they admit that the State Committee paid for
11 the trips detailed in the Complaint, they contend that each was related to Casperson’s official
12 duties as a state senator. In support, Respondents provide the invoices for each stay, which show
13 that all four trips occurred before Casperson became a federal candidate, and they explain how
14 each trip was related to Casperson’s official state senate duties.¹⁰ In regard to the allegation that
15 the State Committee raised \$10,000 from state PACs after Casperson became a federal
16 candidate, the State Committee argues that it did not solicit those contributions, so it did not

⁵ Resp. at 1.

⁶ *Jack Bergman victorious in 1st Congressional District Republican primary*, MICH. LIVE,
http://www.mlive.com/news/index.ssf/2016/08/win_1st_congressional_district.html (Aug. 2, 2016).

⁷ Compl. at 4.

⁸ Compl. at 2, 4 fn.20.

⁹ Casperson for State Senate, *Campaign Finance Disclosures*, MICH. SEC’Y STATE,
<https://cfrsearch.nictusa.com/documents/416411/details/filing/contributions?schedule=%2A&changes=0>. The
\$10,000 cited in the Complaint refers to the State Committee’s receipts from PACs in November and December
2015. The State Committee received additional contributions from PACs in 2016.

¹⁰ Fed. Comm. Resp. at 5-9. Respondents explain that the dates used in the Complaint were the dates of the
credit card statements, not the dates that Casperson actually incurred the travel expenses.

1 violate the Act.¹¹ It further argues that it could not have accepted any prohibited contributions
2 because Michigan prohibits PACs from accepting corporate contributions.¹²

3 III. LEGAL ANALYSIS

4 Among other things, the Act's soft money provisions prohibit federal candidates, their
5 agents, and entities established, financed, maintained, or controlled ("EFMC'd") by federal
6 candidates from soliciting, receiving, directing, transferring, or spending funds in connection
7 with any federal or non-federal election unless the funds are in amounts and from sources
8 permitted by the Act.¹³ A federal candidate who concurrently runs for state or local office,
9 however, may solicit, receive, and spend funds outside of the Act's amount and source
10 limitations if the solicitations, receipts, and disbursements are solely in connection with the
11 candidate's own state or local race and those disbursements are allowable under state law.¹⁴ The
12 application of this exemption turns on whether the individual running for federal office is
13 considered a state candidate under state law.¹⁵ Regardless of whether the exemption applies, a
14 candidate's non-federal committee is prohibited from transferring funds or assets to the

¹¹ State Comm. Resp. at 2.

¹² *Id.*

¹³ 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.61-62. The Commission has concluded that a federal candidate's state committee is an entity EFMC'd by the federal candidate. Advisory Op. 2007-26 (Schock) at 4; Advisory Op. 2006-38 (Casey State Committee) at 4.

¹⁴ 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.623; *see* Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5.

¹⁵ *See, e.g.,* MUR 6820 (Carter for Congress) FGCR at 14.

1 candidate's federal committee.¹⁶ This prohibition on transferring funds applies broadly and
2 includes payment for services to the federal committee.¹⁷

3 Casperson, a federal candidate as of November 9, 2015, directly EFMC'd the State
4 Committee, which raised funds after he became a federal candidate.¹⁸ The Act allows a
5 simultaneous federal and state candidate to raise and spend non-federal funds "solely in
6 connection with [their] election for State or local office."¹⁹ Casperson, however, was not a
7 simultaneous federal and state candidate. Casperson, as a second-term state senator, was term-
8 limited, and there is no available information to suggest that he was running for a different state
9 office.²⁰ Term-limited officeholders are not considered candidates for that office under
10 Michigan law.²¹ Therefore, Casperson was not a state candidate, and the Act's state candidate
11 exception does not apply.

¹⁶ 11 C.F.R. § 110.3(d).

¹⁷ Transfers of Funds from State to Federal Campaigns, 57 Fed. Reg. 36,344, 36,345 (Aug. 12, 1992) (Explanation and Justification). *See e.g.*, MUR 6267 (Paton For Senate) (finding that Paton's federal committee received prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); MUR 5646 (Cohen for New Hampshire) (finding that Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign); MUR 5426 (Dale Schultz for Congress) (finding that Schultz's federal committee received prohibited transfer of funds when the Schultz state committee paid for expenses that the candidate incurred in connection with his federal election).

¹⁸ *See* Advisory Op. 2007-26 (Schock) at 4; *see also* Advisory Op. 2006-38 (Casey State Committee) at 4. Advisory Op. 2009-26 (Coulson) at 5; Advisory Op. 2007-01 (McCaskill) at 3; Factual & Legal Analysis at 9, MUR 6601 (Oelrich).

¹⁹ 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63; *see* Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5.

²⁰ *See Meet Tom*, State Senator Tom Casperson, <http://www.senatortomcasperson.com/meet-senator-tomcasperson/> (last visited Apr. 2, 2016) (stating that Casperson was elected to the Michigan State Senate in 2010 and again in 2014).

²¹ *See* Mich. Comp. Laws Ann. § 169.203(1) ("Candidate" means an individual who ... [h]olds an elective office, unless the officeholder is constitutionally or legally barred from seeking reelection"); *see also* *Candidate Manual*, MICH. BUREAU OF ELECTIONS, <http://mertsplus.com/mertsuserguide/index.php?n=MANUALCAN.TheStatementOfOrganizationFormingAndRegisteringACandidateCommittee#cantrmlmtd> ("An officeholder who is term-limited is no longer a candidate for that office. ...").

1 Under the particular facts of this case, however, the Commission dismisses the
2 allegations that the State Committee solicited and received funds outside the Act's amount
3 limitations and source prohibitions.²² An investigation would be required to find the facts
4 regarding the State Committee's receipts and spending, and given the somewhat modest amounts
5 at issue, we exercise our prosecutorial discretion and dismiss this allegation.

6 Regarding the State Committee's alleged use of soft money to pay for Casperson's
7 federal campaign activities, the Act and Commission regulations prohibit the transfer of funds or
8 assets from a candidate's non-federal campaign committee to his or her federal campaign
9 committee.²³ Thus, if the State Committee made disbursements for travel on behalf of the
10 Federal Committee, those payments would constitute improper transfers to the Federal
11 Committee.

12 It appears that the four specific overnight stays discussed in the Complaint were related to
13 Casperson's state office duties, and under Michigan law, elected officials may use their
14 candidate committee funds to pay for "incidental expenses," defined as expenditures that are "an
15 ordinary and necessary expense[s] paid or incurred in carrying out the business of an elective
16 office."²⁴ While it appears that the State Committee also reported travel-related expenses
17 beyond the four specific overnight stays listed in the Complaint, it is not clear that those
18 additional expenses were related to Casperson's congressional campaign, as opposed to his
19 official state officeholder duties, and the travel expenses the State Committee reported were
20 relatively small. Under these specific circumstances, the Commission exercises its prosecutorial

²² 52 U.S.C. § 30125(e)(1)(B).

²³ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 110.3(d).

²⁴ See User Guide – Candidate Committee, MICH. BUREAU OF ELECTIONS,
<http://mertsplus.com/mertuserguide/index.php?n=MANUALCAN.ExpendituresAndDisbursements#canincexp>

- 1 discretion and dismisses the allegations that Respondents violated the Act by transferring non-
- 2 federal funds.²⁵

²⁵ See *Heckler v. Chaney*, 470 U.S. 821 (1985).